

IC 16-27-2

Chapter 2. Criminal History of Home Health Care Operators and Workers

IC 16-27-2-1

Health care professional defined

Sec. 1. As used in this chapter, "health care professional" means any of the following:

- (1) A licensed physician or a physician's assistant (as defined in IC 25-22.5-1-1.1).
- (2) A dentist licensed under IC 25-14.
- (3) A chiropractor licensed under IC 25-10-1.
- (4) A podiatrist licensed under IC 25-29.
- (5) An optometrist licensed under IC 25-24.
- (6) A nurse licensed under IC 25-23-1.
- (7) A physical therapist licensed under IC 25-27 or a physical therapy assistant certified under IC 25-27.
- (8) A speech language pathologist or an audiologist licensed under IC 25-35.6-3.
- (9) A speech language pathology aide or an audiology aide (as defined in IC 25-35.6-1-2).
- (10) An:
 - (A) occupational therapist; or
 - (B) occupational therapist assistant; certified under IC 25-23.5.
- (11) A social worker licensed under IC 25-23.6 or a clinical social worker licensed under IC 25-23.6.
- (12) A pharmacist licensed under IC 25-26-13.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.2; P.L.147-1997, SEC.2.

IC 16-27-2-2

Home health agency defined

Sec. 2. (a) As used in this chapter, "home health agency" means a home health agency licensed under IC 16-27-1.

(b) The term does not include an individual health care professional who provides professional service to a patient in the temporary or permanent residence of the patient.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.3.

IC 16-27-2-2.2

Services defined

Sec. 2.2. As used in this chapter, "services" includes:

- (1) home health services (as defined in IC 16-27-1-5); and
- (2) any services such as homemaker, companion, sitter, or handyman services provided by a home health agency in the temporary or permanent residence of a patient or client of the home health agency.

As added by P.L.178-1993, SEC.4.

IC 16-27-2-3

Operation of home health agency; prohibition; criminal conviction

Sec. 3. (a) A person may not operate a home health agency if the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the person's conviction for theft occurred less than ten (10) years before the date of submission by the person of an application for licensure as a home health agency under IC 16-27-1.

(b) A person who knowingly or intentionally violates this section commits a Class A misdemeanor.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.5.

IC 16-27-2-4

Employees; criminal history

Sec. 4. (a) A person who operates a home health agency shall apply, not more than three (3) business days after the date that an employee begins to provide services in a patient's temporary or permanent residence, for a copy of the employee's limited criminal history from the Indiana central repository for criminal history information under IC 10-13-3.

(b) A home health agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than three (3) business days without applying for that person's limited criminal history as required by subsection (a).

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.6; P.L.146-1996, SEC.4; P.L.148-1997, SEC.1; P.L.2-2003, SEC.48.

IC 16-27-2-5

Employees of home health agency; prohibition; criminal conviction

Sec. 5. (a) Except as provided in subsection (b), a person who operates a home health agency may not employ a person to provide services in a patient's or client's temporary or permanent residence if that person's limited criminal history indicates that the person has been convicted of any of the following:

- (1) Rape (IC 35-42-4-1).
- (2) Criminal deviate conduct (IC 35-42-4-2).
- (3) Exploitation of an endangered adult (IC 35-46-1-12).
- (4) Failure to report battery, neglect, or exploitation of an endangered adult (IC 35-46-1-13).
- (5) Theft (IC 35-43-4), if the conviction for theft occurred less than ten (10) years before the person's employment application date.

(b) A home health agency may not employ a person to provide services in a patient's or client's temporary or permanent residence for more than twenty-one (21) calendar days without receipt of that

person's limited criminal history required by section 4 of this chapter, unless the Indiana central repository for criminal history information under IC 10-13-3 is solely responsible for failing to provide the person's limited criminal history to the home health agency within the time required under this subsection.

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.7; P.L.148-1997, SEC.2; P.L.2-2003, SEC.49.

IC 16-27-2-6

Fees; responsibility for payment

Sec. 6. (a) A person who operates a home health agency is responsible for the payment of fees under IC 10-13-3-30 and other fees required under section 4 of this chapter.

(b) A home health agency may require a person who applies to the home health agency for employment to provide services in a patient's or client's temporary or permanent residence:

- (1) to pay the cost of fees described in subsection (a) to the home health agency at the time the person submits an application for employment; or
- (2) to reimburse the home health agency for the cost of fees described in subsection (a).

As added by P.L.2-1993, SEC.10. Amended by P.L.178-1993, SEC.8; P.L.2-2003, SEC.50.

IC 16-27-2-7

Prohibited employment practices

Sec. 7. A person who:

- (1) operates a home health agency; and
- (2) violates section 4 or 5 of this chapter;

commits a Class A infraction.

As added by P.L.2-1993, SEC.10.

IC 16-27-2-8 Repealed

(Repealed by P.L.290-2001, SEC.36.)

IC 16-27-2-9

Immunity from liability

Sec. 9. A person (other than a person denied employment or dismissed under this chapter or against whom a finding is made for the registry of nurse aides under 42 CFR 483.156) who in good faith:

- (1) denies employment to an individual or dismisses an individual from employment under this chapter;
- (2) testifies or participates in an investigation or an administrative or a judicial proceeding arising from:
 - (A) this chapter; or
 - (B) 42 CFR 483 regarding the registry of nurse aides; or
- (3) makes a report to the state department or the registry of nurse aides;

is immune from both civil and criminal liability arising from those actions.

As added by P.L.110-1999, SEC.4.